

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

JANUARY TERM, 1918.

No. 3137.

478

AUGUSTUS CRANE, ALBION K. PARRIS, AND EUGENE E.
THOMPSON, COPARTNERS, TRADING AS CRANE, PAR-
RIS & COMPANY, APPELLANTS,

vs.

POSTAL TELEGRAPH CABLE COMPANY, A CORPORATION.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED NOVEMBER 23, 1917.

PRINTED DECEMBER 28, 1917.

Court of Appeals of the District of Columbia.

JANUARY TERM, 1918.

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AUGUSTUS CRANE, ALBION K. PARRIS, AND EUGENE E. THOMPSON, COPARTNERS, TRADING AS CRANE, PARRIS & COMPANY, APPELLANTS,

vs.

POSTAL TELEGRAPH CABLE COMPANY, A CORPORATION, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 3137.

AUGUSTUS CRANE et al., &c., Appellants,

vs.

POSTAL TELEGRAPH CABLE COMPANY, &c.

a Supreme Court of the District of Columbia.

No. 57604. At Law.

POSTAL TELEGRAPH CABLE COMPANY, a Corporation, Plaintiff,

vs.

AUGUSTUS CRANE, ALBION K. PARRIS, and EUGENE E. THOMPSON,
Copartners, Trading as Crane, Parris & Company, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Declaration, &c.*

Filed January 7, 1915.

In the Supreme Court of the District of Columbia.

No. 57604. At Law.

POSTAL TELEGRAPH CABLE COMPANY, a Corporation, Plaintiff,

vs.

AUGUSTUS CRANE, ALBION K. PARRIS, and EUGENE E. THOMPSON,
Copartners, Trading as Crane, Parris & Company, Defendants.

First Count. The plaintiff, Postal Telegraph Cable Company, a corporation organized and existing under the laws of the State of

Delaware, sues the defendants, Augustus Crane, Albion K. Parris and Eugene E. Thompson, all of the District of Columbia, co-partners trading as Crane, Parris & Company, and at all times mentioned hereinafter engaged in the business of banking in the District of Columbia, for money payable by the defendants to the plaintiff for goods sold and delivered by the plaintiff to the defendants, and for work done and materials provided by the plaintiff for the defendants at their request; and for money lent by the plaintiff to the defendants; and for money paid by the plaintiff for the defendants at their request; and for money received by the defendants for the use of the plaintiff; and for money found to be due from the defendants to the plaintiff on accounts stated between them; and the plaintiff claims Seven Thousand, Seven Hundred and Forty Six Dollars and Forty Two Cents, (\$7,746.42) with interest from the 24th day of October, 1914, according to the particulars of demand hereto annexed.

Second Count. And the said plaintiff further sues the said defendants for that, whereas, heretofore to wit, between the dates, June 29, 1914 and October 24, 1914, both inclusive, at the City of Washington, in the District of Columbia, the said plaintiff was lawfully possessed, as of its own property, of certain goods and chattels, to wit, certain checks, of which the following are true copies:

No. 89.

WASHINGTON, D. C., June 29, 1914.

The Riggs National Bank.

Pay to the order of the Postal Telegraph Co., One hundred and ninety three 85/100 Dollars.
\$193.85.

HORACE T. GEYMOND.

The Evening Star Newspaper Company.

No. 5085.

WASHINGTON, D. C., July 16, 1914.

The Columbia National Bank.

Pay to the order of Postal Tel. Cable Co. \$180.98, One hundred and eighty and 98/100 Dollars.
H. G. HANFORD.

FRANK B. ROGERS.

No. 78.

WASHINGTON, D. C., July 17, 1914.

Washington and Southern Bank.

Pay to the order of Postal Telegraph Cable Co. \$990.45, Nine hundred ninety 45/100 Dollars.

K. B. SHAH.

The Washington Post.

No. 23311.

WASHINGTON, D. C., July 30, 1914.

The National Metropolitan Bank.

Pay to the order of Postal Telegraph Cable Co. Three hundred One
& 23/100 Dollars.
\$301.23.

THE WASHINGTON POST CO.
ARTHUR D. MARKS.

No. 82.

WASHINGTON, D. C., Sept. 11, 1914.

The Riggs National Bank.

Pay to the order of Postal Telegraph Cable Co. Seven hundred
eighty six & 3/100 Dollars.
\$786.03.

MATSUO STANEY.

No. 4169.

WASHINGTON, D. C., Sep. 23, 1914.

The Riggs National Bank.

Pay to the order of Postal Telegraph Co. Forty eight 98/100
Dollars.
\$48.98.

T. THEODORE WONG.

No. 714.

WASHINGTON, D. C., Sep. 23, 1914.

The Riggs National Bank.

Pay to the order of Postal Telegraph Co. Eighty one 74/100
Dollars.
\$81.74.

T. THEODORE WONG.

3

No. 373.

WASHINGTON, D. C., Sept. 18, 1914.

The Riggs National Bank.

Pay to the order of Postal Telegraph Cable Co. One thousand six
hundred eighty nine 81/100 Dollars.
\$1,689.81.

SHYETOSHI TAKEUCHI.

No. 385.

WASHINGTON, D. C., Oct. 19, 1914.

The Riggs National Bank.

Pay to the order of Postal Telegraph Cable Co. Two thousand and eight 56/100 Dollars.

\$2008.56.

SHYETOSHI TAKEUCHI.

No. 1838.

WASHINGTON, D. C., Oct. 24, 1914.

Crane Parris & Co., Bankers, of Washington, D. C.

Pay to the order of Postal Telegraph Cable Co. Four hundred twenty and 00/100 Dollars.

\$420.00.

POSTAL TELEGRAPH-CABLE COMPANY,
By HENRY GREEN, *Cashier*.

Countersigned

G. M. FOOTE, *Manager*.

No. 131.

WASHINGTON, D. C., Oct. 5, 1914.

Washington and Southern Bank.

Pay to the order of Postal Telegraph-Cable Co. One thousand and forty four 79/100 Dollars.

\$1,044.79.

K. B. SHAH.

and being so possessed thereof, it, the said plaintiff, afterwards, to wit, at the time and place aforesaid, casually lost the said goods and chattels out of its possession; and the said goods and chattels afterwards, to wit, at the time and place aforesaid, came to the possession of the said defendants by finding; yet the said defendants knowing the said goods and chattels to be the property of the said plaintiff, and of right to belong and appertain to it, the said plaintiff, but contriving and fraudulently intending to defraud and deceive the said plaintiff in this behalf, has not as yet delivered the said goods or chattels or any part thereof to the said plaintiff although often requested so to do; but so to do has hitherto wholly refused and still refuses; and afterwards, to wit, at the time and place aforesaid, the said defendants converted and disposed of the said goods and chattels to their, 4 the said defendants' own use; to the damage of the said plaintiff in the sum of \$7,746.42 with interest on the said sum from the 24th day of October; and therefore it brings this suit; and the said plaintiff claims on account thereof, the sum of Seven Thousand Seven Hundred and Forty Six Dollars and Forty Two Cents, (\$7,746.42) with interest on the said sum at the rate of 6 per cent per annum from the 24th day of October, 1914, together with the costs of this suit.

BYNUM E. HINTON,
Att'y for Plaintiff.

Particulars of Demand.

Augustus Crane, Albion K. Parris and Eugene E. Thompson, trading as Crane, Parris & Company, to Postal Telegraph Cable Co., Debtor.

To the amount of the following checks, collected by the Crane Parris & Company from the respective drawee banks named in said checks, for the use of the said Postal Telegraph Cable Company.

No. 89. WASHINGTON, D. C., June 29, 1914.

The Riggs National Bank.

Pay to the order of the Postal Telegraph Co., One hundred and ninety three 85/100 Dollars.
\$193.85.

HORACE T. GEYMOND.

The Evening Star Newspaper Co.

No. 5085. WASHINGTON, D. C., July 16, 1914.

The Columbia National Bank.

Pay to the order of Postal Tel. Cable Co. \$180.98, One hundred and eighty and 98/100 Dollars.
H. G. HANFORD. FRANK B. ROGERS.

5

No. 78. WASHINGTON, D. C., July 17, 1914.

Washington and Southern Bank.

Pay to the order of Postal Telegraph Cable Co. \$990.45, Nine hundred ninety 45/100 Dollars.

K. B. SHAH.

The Washington Post.

No. 23311. WASHINGTON, D. C., July 30, 1914.

The National Metropolitan Bank.

Pay to the order of Postal Telegraph Cable Co. Three hundred One & 23/100 Dollars.
\$301.23.

THE WASHINGTON POST CO.
ARTHUR D. MARKS.

No. 82.

WASHINGTON, D. C., Sept. 11, 1914.

The Riggs National Bank.

Pay to the order of Postal Telegraph Cable Co. Seven hundred
eighty six & 3/100 Dollars.
\$786.03.

MATSUO STANEY.

No. 4169.

WASHINGTON, D. C., Sep. 23, 1914.

The Riggs National Bank.

Pay to the order of Postal Telegraph Co. Forty eight 98/100
Dollars.
\$48.98.

T. THEODORE WONG.

No. 714.

WASHINGTON, D. C., Sep. 23, 1914.

The Riggs National Bank.

Pay to the order of Postal Telegraph Co. Eighty one 74/100
Dollars.
\$81.74.

T. THEODORE WONG.

No. 373.

WASHINGTON, D. C., Sept. 18, 1914.

The Riggs National Bank.

Pay to the order of Postal Telegraph Cable Co. One thousand six
hundred eighty nine 81/100 Dollars.
\$1,689.81.

SHYETOSHI TAKEUCHI.

No. 385.

WASHINGTON, D. C., Oct. 19, 1914.

The Riggs National Bank.

Pay to the order of Postal Telegraph Cable Co. Two thousand and
eight 56/100 Dollars.
\$2,008.56.

SHYETOSHI TAKEUCHI.

No. 131.

WASHINGTON, D. C., Oct. 5, 1914.

Washington and Southern Bank.

Pay to the order of Postal Telegraph-Cable Co. One thousand and forty-four 79/100 Dollars.

\$1,044.79.

K. B. SHAH.

Total \$7,326.42

To the amount named in the following check, paid by the said Crane, Parris & Company to one Henry Green, without the order or authority of the Postal Telegraph-Cable Company, the payee named therein, and charged to the account of the said plaintiff, the Postal Telegraph Cable Co.

No. 1838.

WASHINGTON, D. C., Oct. 24, 1914.

Crane, Parris & Co., Bankers, of Washington, D. C.

Pay to the order of Postal Telegraph Cable Co. Four hundred twenty and 00/100 Dollars.

\$420.00.

POSTAL TELEGRAPH CABLE COMPANY,
By HENRY GREEN, *Cashier.*

Countersigned

C. M. FOOTE, *Manager.*

Grand total \$7,746.42

Pleas.

Filed January 30, 1915.

* * * * *

1. For plea to the first count of the declaration defendants say they never promised as therein alleged.

2. And for a further plea to said count they say they never were indebted as therein alleged.

3. For plea to the second count of said declaration they say they are not guilty in manner and form as therein alleged.

MADDOX AND GATLEY,
Attorneys for Defendants.

Replication.

Filed February 16, 1915.

* * * * *

Now comes the plaintiff in the above entitled cause and joins issue on the pleas of the defendants.

B. E. HINTON,
Attorney for Plaintiff.

Motion for Leave to Amend Declaration.

Filed October 12, 1916.

* * * * *

Now comes the plaintiff and moves the Court for leave to amend its declaration in the above entitled cause, in the manner following:

Insert on page 2, line 11, "Horace T. Seymour" in lieu of "Horace T. Geymon", as the signature to check No. 89, dated June 29, 1914.

Insert in line 18, on page 2, the name of "Frank B. Noyes" in lieu of "Frank B. Rogers", as the signature to check No. 5085, dated July 16, 1914.

Insert in line 23, page 2, the name of "K. F. Shah" in lieu of "K. B. Shah", as the signature to check No. 78, dated July 17, 1914.

Insert in line 35, page 2, the name of "Matsuo Itamey" in lieu of "Matsuo Staney", as the signature to check No. 82, dated September 11, 1914.

Insert in line 26, page 3, of said declaration, the name of "K. F. Shah" in lieu of "K. B. Shah" as the signature to check No. 131, dated October 5, 1914.

Plaintiff further moves the Court for leave to amend its bill of particulars attached to said declaration, wherein the foregoing
8 checks are again listed, so as to make the said bill of particulars correspond with the amendments above suggested in the declaration.

BYNUM E. HINTON,
Attorney for Plaintiff.

Memoranda.

October 12, 1916.—Leave to amend declaration granted.

October 18, 1916.—Verdict for plaintiff for \$5,666.16 with interest from October 24, 1916.

Motion for New Trial.

Filed October 20, 1916.

* * * * *

Now comes here the defendants by their attorneys, Messrs. Maddox and Gatley, and move the court to set aside the verdict rendered herein and to grant a new trial on the following grounds:

1. The court erred in overruling the motion of defendants to strike from the testimony section 6 of the by-laws of the plaintiff corporation.

2. The court erred in holding, in the absence of knowledge on the part of defendants of the provisions of said section 6 of said by-laws, that such provisions were binding upon the defendants.

9 3. The court erred in overruling the motion of defendants to grant a verdict in their favor.

4. The court erred in granting the motion of plaintiff to direct a verdict in their favor.

5. The court erred in refusing to grant each of the instructions requested on behalf of the defendants.

MADDOX AND GATLEY,
Attorneys for Defendants.

MESSRS. B. E. HINTON,
J. W. COX,
Attorneys for Plaintiff.

Please take notice that we shall calendar the foregoing motion for hearing on Friday, the 27th day of October 1916.

MADDOX AND GATLEY,
Attorneys for Defendants.

Copy received 10/18/16.
B. E. HINTON.

Memorandum by Court on Motion for New Trial.

Filed January 8, 1917.

* * * * *

A careful consideration of the authorities and arguments submitted pro and con on the motion for a new trial in this case, and a careful review of the testimony, has not convinced the Court that it should disturb the directed verdict.

The motion for a new trial must, therefore, be overruled.

10 By the Court:

F. L. SIDDONS, *Justice.*

JANUARY 8, 1917.

Supreme Court of the District of Columbia.

MONDAY, January 8th, 1917.

Session resumed pursuant to adjournment, Hon. F. L. Siddons, Justice presiding.

* * * * *

Upon consideration of the motion for a new trial filed herein and heretofore argued and submitted, it is ordered that said motion be, and the same is hereby overruled and judgment on verdict is ordered. Wherefore it is considered that the plaintiff herein recover of the defendant the sum of Five Thousand Six Hundred and Sixty-six Dollars and sixteen cents (\$5,666.16) with interest thereon from the 24th day of October 1916, being the money heretofore found payable by defendants to plaintiff by reason of the premises, together with costs of suit to be taxed by the clerk and have execution thereof.

From the foregoing, the defendants by their attorney of record, in open Court, notes an appeal to the Court of Appeals. Whereupon, with the consent of plaintiff's attorney, the penalty of a bond to operate as a Supersedeas, is hereby fixed in the sum of Seven Thousand Dollars.

11

Memoranda.

January 30, 1917.—Supersedeas bond, \$7,000.00, approved and filed.

February 12, 1917.—Time to submit Exceptions extended to, and including, March 15, 1917.

February 23, 1917.—Bill of Exceptions submitted.

Supreme Court of the District of Columbia.

TUESDAY, October 23rd, 1917.

Session resumed pursuant to adjournment, Hon. William Hitz, Justice presiding.

* * * * *

Before Judge Siddons.

The Court having this day signed the bill of exceptions taken at the trial of this cause and heretofore submitted, as of the time of the noting thereof, now hereby orders the same of record nunc pro tunc.

12

Assignment of Errors.

Filed October 23, 1917.

* * * * *

1. The Court erred in holding that the by-laws of the plaintiff company were binding upon the defendants, in the absence of knowledge of the provisions of such by-laws.

2. The Court erred in overruling defendants' motion for a directed verdict.

3. The Court erred in granting the plaintiff's motion for a directed verdict.

4. The Court erred in refusing to grant the instructions numbered respectively 1, 2, 3, 4, 4½, 5 and 6, requested on behalf of the defendants.

MADDOX AND GATLEY,
Attorneys for Defendants.

Received copy of foregoing Assignment of Errors this 22d day of October, 1917.

BYNUM E. HINTON,
Attorney for Plaintiff.

Designation of Record.

Filed October 23, 1917.

* * * * *

The clerk will prepare a transcript of record on the appeal in the above-entitled case and include therein the following:

- 13
1. Declaration.
 2. Motion for leave to amend declaration and Particulars of Demand.
 - 2½. Mem: Leave to amend granted.
 3. Defendants' Pleas.
 4. Joinder in Issue.
 5. Verdict.
 6. Judgment.
 7. Memorandum: Appeal and Bond on appeal.
 8. Opinion of Court.
 9. Memorandum: Time to submit Bill of Exceptions extended to March 15, 1917.
 10. Memorandum: Bill of Exceptions submitted.
 11. Memorandum: Bill of Exceptions signed and made part of record.
 12. Assignment of Errors.
 13. Designation of Record.

MADDOX AND GATLEY,
Attorneys for Defendants.

Received copy of foregoing designation of record this 22d day of October 1917.

BYNUM E. HINTON,
Attorney for Plaintiff.

14 *Counter-designation of Record.*

Filed October 25, 1917.

* * * * *

The clerk will please include in the transcript of record in the above entitled cause, in addition to the papers designated by the attorneys for the defendants, the following:

1. Motion of defendants for a new trial.
2. Memorandum of the Court overruling motion for a new trial.

BYNUM E. HINTON,
Attorney for Plaintiff.

15 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 14, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 57604 at Law, wherein Postal Telegraph Cable Company, a corporation, is Plaintiff and Augustus Crane, et al., trading as Crane, Parris & Company, are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 20th day of November, 1917.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

16 In the Supreme Court of the District of Columbia.

At Law. No. 57604.

POSTAL TELEGRAPH-CABLE COMPANY, a Corporation, Plaintiff.

v.

AUGUSTUS CRANE et al., Defendants.

Bill of Exceptions.

Be it remembered that at the trial of this cause, the plaintiff, to maintain the issues upon its part joined, offered and gave the following testimony of WILLIAM B. DUNN, who testified as follows:

I am secretary of the plaintiff corporation, which was incorporated under the laws of Delaware in June, 1908. Witness produced the minutes of a meeting of the Board of Directors of the plaintiff Company held August 25, 1908, containing the following resolution, which was offered in evidence:

"Resolved, that an account be opened with Crane, Parris & Co., Washington, D. C., and further resolved that until otherwise ordered checks drawn upon the account of Crane, Parris & Co., Washington, D. C., shall be signed in the name of the Postal Telegraph-Cable Company by J. B. Malloy, Cashier, and countersigned by F. B. Traverse, Manager."

Witness produced the following resolution adopted by the Board June 15, 1909, and the same was offered in evidence:

"Resolved, that the treasurer be, and he is hereby, empowered to authorize the signing or countersigning of checks and drafts on the Company's bank accounts by the respective permanent or temporary successors of individual employees who have been previously authorized to sign or countersign checks or drafts upon the respective accounts and to open such new bank accounts, and to make such changes in or transfers of present bank accounts as he may deem necessary or desirable."

17 Thereupon counsel for the plaintiff offered in evidence section six of the by-laws of the plaintiff Company, to the admission of which in evidence counsel for the defendants objected unless counsel for the plaintiff would prove that the defendants had notice of the provisions of said by-laws.

Attorney for plaintiff stated that he had no doubt that notice would

be brought home to defendants but the theory on which the by-laws is offered is to show that there was no authority for the cashier to endorse the company's checks; that we are laying before the jury and the court all the authority that was granted to anybody, so that it can be seen what that authority was, and that there was no authority given anybody to endorse, or any authority given from which such authority to endorse could be inferred or in which it would be included.

The court let the evidence in reserving the question of the final ruling as to whether it should stay in or not. Counsel for defendants stated that was his suggestion; that it was with the thought that the court might have that idea in mind, that he objected to it, unless counsel would say that they would bring home notice to defendants. The court then stated: "It is in the case subject to the possible action of striking it out." The by-law is as follows:

"It shall be the duty of the treasurer to receive and keep the cash funds belonging to the company and to enter regularly in books kept for that purpose all moneys received and disbursed on account of the said company. Said officer shall also perform such acts as he may be directed by the Board of Directors, and all duties and acts specially required of such officer. He shall give such bond for the faithful discharge of his duty as may be required by the Board of Directors. All funds of the corporation coming into the hands of the treasurer shall be deposited in a bank, banks or depository to be named by the Board of Directors, and all checks shall be signed by the treasurer and countersigned by the president or vice-president.

18 The treasurer shall also have power, and he hereby is authorized, to receive and give receipts for all moneys due and payable to this company from any source whatever. And to endorse checks and warrants in its name and on its behalf, and full discharge for same to give."

Witness testified there was no other authority whatever in the by-laws or the resolutions giving anybody else, other than the Treasurer, power to endorse for the Company; and that there are no other by-laws or resolutions other than those he had already read, with respect to authorizing signatures to checks on local bank accounts.

The plaintiff then offered in evidence certain written instructions, sent from the treasurer's office of the plaintiff, 253 Broadway, to the defendants, covering the period from August 1st, 1911 down to November 1st, 1914, authorizing defendants to honor checks drawn against the account of the plaintiff company with defendants when signed and countersigned as designated in said respective instructions. The first instruction was as follows:

Postal Telegraph Cable Co.

Office of the Treasurer, 253 Broadway,

NEW YORK, August 4, 1911.

Crane, Parris & Co., Washington, D. C.

GENTLEMEN: Effective at once and until otherwise ordered, please honor checks drawn against the account of this Company with your bank when signed in the name of the Company by N. I. Taylor, Cashier, and countersigned by G. M. Foote, Manager.

Yours truly,

POSTAL TELEGRAPH CABLE CO.,
By THEO. L. CUYLER, JR.,
Ass't Treasurer.

The others were on the dates and authorized signatures as follows:

February 26, 1912, "G. M. Foote, Manager, vice N. I. Taylor."

February 27, 1912, "N. I. Taylor, vice G. M. Foote".

June 20, 1912, "S. M. Warren, Jr., on checks during the temporary absence of G. M. Foote, Manager."

19 August 14, 1912, "S. M. Warren, Cashier, vice N. I. Taylor."

August 16, 1912, "S. M. Warren, Cashier, and countersigned by Henry Green, Manager, vice G. M. Foote."

January 30, 1913, "Henry Green, Cashier, vice S. M. Warren, Jr."

November 25, 1913, "Countersigned by L. P. Fowler, vice G. M. Foote."

August 13, 1914, "W. H. Anderson, vice G. M. Foote."

September 2, 1914, "Henry Green, Cashier, and countersigned by G. M. Foote, Manager."

October 31, 1914, "A. L. Sutherland, Cashier, vice H. Green."

November 4, 1914, "A. L. Sutherland, Cashier, vice H. Green and countersigned by G. M. Foote, Manager."

On cross-examination the witness testified there was no other resolution giving power to any person other than the treasurer of the plaintiff to indorse checks payable to the order of the Company.

Thereupon plaintiff offered in evidence the checks described in the amended particulars of demand filed herein, except the check for \$990.45 of July 17, 1914, signed by K. H. Shah. All of which checks bore the endorsement "Postal Telegraph Cable Co., Henry Green, Cashier," except the check of the Washington Post Company of July 30, 1914, for \$301.25 which was endorsed "Postal Telegraph Cable Co., Henry Green." The words "Henry Green, Cashier" or "Henry Green" were written in long hand on all of said checks except that of the Evening Star Newspaper Company of July 16, 1914, for \$180.98, on which the entire endorsement was by rubber stamp. The check of October 24, 1914, by the plaintiff company on defendants' bank for \$420.00 was stamped on the face thereof "Paid, October 24, 1914." The remainder of the checks were cleared or collected by the defendants through the Federal National Bank, with

the exception of the checks dated September 18, 1914, for \$1,689.81 and June 29, 1914, for \$193.85, which checks were collected
20 through the National Metropolitan Bank. All prior endorsements on all of said checks were guaranteed by the defendants.

After examining the deposit slips exhibited by defendants' counsel two days before trial it was admitted by the plaintiff that the check dated July 17, 1914, for \$990.45 had been deposited to the credit of plaintiff's account with the defendants and it was also admitted that \$1,089.81 of the proceeds of check for \$1,689.81, dated September 18, 1914, had likewise been deposited to the credit of plaintiff's account with defendants and that the plaintiff would not ask for a recovery for these amounts.

It was admitted by counsel for the defendants that none of the checks sued on went to the credit of the plaintiff's account with the defendants except this check for \$990.45 and \$1,089.81 of the check for \$1,689.81.

Thereupon G. MANSON FOOTE was called as a witness for the plaintiff and testified as follows: I am the manager of the plaintiff Company in Washington and have been since August, 1911. I have been with the Company in various capacities since its organization. I am in charge of the office in Washington. Among the employees under me is a cashier. The cashier is appointed by the district superintendent at Philadelphia on my recommendation. The cashier has charge of receiving and paying out moneys of the Company on my approval for bills incurred; charge of the money transfer department, the keeping of the general books of the cashier's department and the paying of employees. The moneys coming into the hands of the cashier are the funds taken in by the various branch offices of the Company in the District and moneys deposited to be transmitted by telegraph to some distant station for payment to a payee and moneys paid in by customers in payment of their accounts with the Company. All funds to be transmitted by telegraph must be deposited in cash. Payment of bills by customers are invariably made by check. The checks and cash received by the cashier should
21 be deposited in bank by him the following morning. We had a rubber stamp for endorsing all checks for deposit as follows: "Pay to the order of Crane, Parris & Co., Postal Telegraph-Cable Company, by Henry Green, Cashier." I did not receive any instructions that went to Crane, Parris & Co. with respect to the cashing of checks drawn on the plaintiff's account with them. Those instructions were given by the treasurer's office. I did not know when they were given and did not receive copies of them. My instructions were that all checks drawn on the plaintiff's account with the defendants must be signed by the cashier and countersigned by me, and as far as I know all such checks were signed in that way. Witness never received any authority from the company authorizing him or Green to endorse and cash checks payable to the company. I never knew of any of the checks sued on, or any similar checks being endorsed and cashed.

On cross-examination, the witness testified as follows: The cashier had charge of the bank account with Crane, Parris & Co. Henry Green was appointed cashier on my recommendation. I had confi-

dence in him. It was his duty to go to the bank and get two or three thousand dollars at a time to get money to meet the pay roll. I would countersign checks to enable him to do so. The cashier received all moneys that came into the office. The only endorsement the cashier was authorized to put on a check payable to the Company was the rubber stamp "Pay to the order of Crane, Parris & Co., Postal Telegraph Cable Co., by Henry Green, Cashier." I never received any instructions about the cashier endorsing checks and I don't know of the cashier ever having received any instructions. Green became cashier in February, 1913, and continued as such until October, 1914. At the end of each month the cashier had to make out a trial balance and forward it to New York; the balance shown on his statement had to agree with the amount on deposit to the credit of the Company's account with the defendants. Witness was asked whether or not the defendant bank did not telegraph to the home office at the

22 end of each month the amount to the company's credit in the bank; and witness replied that he did not know. The cashier kept the money in a safe in his office or in a cash drawer under lock and key. He had a cash drawer for current cash. That is what we termed accounting. That is just what cash he handled over the counter. I have taken charge and acted as cashier in the absence of the cashier, not when he went out to lunch but when he was absent from the city or ill. I could not say that I never took charge of the office when the cashier was out for a short period of time. Did not do so as a custom, may have done so at some time, but not generally speaking, not if any one else was there. He would handle anywhere from fifty to seventy-five thousand dollars some months. It would not average that of course. The cashier was under \$5,000 bond. He received a salary of \$75.00 a month. Witness had no knowledge that the checks sued on were being cashed, or of any similar checks having been cashed. I had reason to become suspicious of Green in June, 1914, and again in September, 1914, some one either spoke to me about him or I saw him talking with a man I understood to be a race horse tout. I asked him if he was playing the races, told him I could not tolerate such a thing, and gave him some kindly advice. I did not notify headquarters until after his defalcation and arrest in October, 1914.

In response to questions from the court, witness stated that substantially speaking the only checks that were received at the local office payable to the Company were these checks of customers who paid their bills periodically.

Thereupon JOSEPH J. CARDONA was called as a witness for the plaintiff and testified as follows: that he is the Assistant Treasurer of the plaintiff Company in the office in New York; that the Treasurer's department makes arrangements with banks for the opening of accounts and gives the instructions to the bank; and no other office makes any arrangements or gives any instructions to banks. The Treasurer's instructions go right to the bank from the Treasurer's office; that the occasion for making any change in instructions as to signatures to checks would arise, when the superintendent of the particular division would advise the Treasurer's Department that the Manager had been temporarily absent for

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a vacation, or been transferred to another office. They in turn would write a letter of authority for that individual signature being changed, to the bank direct; so that every time there was a change in one of these men who signed, the bank would be advised accordingly direct from the Treasurer's office. The Manager would not be advised of that change. On cross-examination witness said that he was referring to such written instructions as had been offered in evidence here to Crane, Parris & Company.

Thereupon the plaintiff announced its case closed.

Whereupon counsel for the defendants moved the court to require the plaintiff to elect upon which count of the declaration it would stand, which motion was granted, to which ruling of the Court plaintiff duly noted an exception and the plaintiff elected to stand on the money counts.

Thereupon the defendants, to maintain the issues on their part joined, called as a witness HENRY GREEN, who testified as follows:

I am twenty-three years old and my home is in Washington. I came here to testify from the federal prison at Atlanta, Ga., where I am serving a sentence of four years for embezzling funds of the plaintiff. I was appointed cashier of the Postal Telegraph-Cable Company in February, 1913, when I was twenty years old. I had worked for the Company about a year and a half before that time as counter clerk and manager's clerk. My duties as cashier were to handle all moneys that came into the office, to keep the cash book, ledger and journal and to handle both out-going and in-coming money orders. I would have to make up about sixteen to twenty reports a month of the Company's business and furnish a trial balance at the end of each month. The balance shown would have to agree with the balance reported by the bank. If it was not correct they would wire me to that effect. I made all deposits in the bank account with the defendants and drew all checks to meet the pay roll. Witness was shown the check dated October 24, 1914, for \$420 and testified that it was not filled up when Mr. Foote, the manager, countersigned it. He countersigned it in blank. Witness was shown the check dated September 18, 1914, for \$1,689.81 and testified that he took the check to the bank, made out a deposit slip for \$1,089.81, received the balance in cash and deposited the check. He was shown the deposit slip and said that "it refreshed his recollection, and that what happened was that—along about that time I believe the Auditor from the Postal Telegraph Cable Company from Philadelphia came down to look over my books, a Mr. Hardy I believe his name was.

At that time I did not know, at a rough guess, just what the difference between my bank account and my books was. This check came in in payment of a bill that morning. I took the check up to the bank, made out a deposit slip for \$1,089.81, and received the balance in cash, depositing this check."

There are two ways of paying telegraphic money orders. The money order could either be sent vigilant or unidentified. If sent vigilant, it required personal identification, otherwise I could only

pay it by draft. Unidentified required a letter or some other means of identification. I would issue a New York draft in payment of the money order, the payee would indorse it if it came unidentified and I would cash it and I would send the draft up with the deposit next morning. I have gotten them cashed elsewhere, at Gerstenburg's, Engel's, Loughran's, any place that was convenient. I would indorse them "Postal Telegraph-Cable Company, Henry Green, Cashier."

If I did not have cash in my drawer or safe at the office and needed money to transact the business of the Company, and had in my possession checks similar to the checks sued upon in this case, 25 which had been received by me as cashier in payment of the bills due the Company, I would get the money I needed by indorsing the checks, taking them to the bank and cashing them. I did this the whole time I was cashier. Mr. Foote, the manager, knew that I was doing it. He took charge of my office when I went to the bank to cash some of these checks. I knew of other cashiers doing the same thing, Warren and Taylor. I was manager's clerk when Mr. Warren was cashier and that brought me in contact with him. Witness was shown the checks sued on in this case and was asked what he did with the money when he cashed checks similar to the checks he had just looked at, and these checks that he had cashed, and he testified that he brought the money back and placed it in the cash drawer in the cashier's office and co-mingled it with the money that was in the cash drawer and used it to transact the day's business, and paid money orders out of it. He got to gambling on horse races, and for the purpose of betting on horse races he took money out of the cash drawer. He was asked whether or not he took out of the cash drawer any money that was the proceeds of these checks, and he said he could not positively say. He put this money in with all the other moneys that were there, and that came in with the transaction of the day's business. Some of the proceeds of the checks sued upon were subsequently deposited to the credit of the plaintiff's account with defendants by way of cash deposits; I can't say how much. After my defalcation I left Washington on the night of October 30, 1914. I gave Mr. Sutherland \$570.00 out of the co-mingled funds that I had (it is admitted that this amount was subsequently deposited to plaintiff's credit with defendants). Before leaving Washington I had given Miss W. \$500.00 that I had taken out of these co-mingled funds (it is admitted the plaintiff received back this money and it was deposited to the plaintiff's credit with defendants). I was arrested in Baltimore and at the time of my arrest had on my person around \$2,800.00, some of which 26 was taken from these co-mingled funds. I don't know approximately how much. This money was subsequently received by the plaintiff.

Witness testified that to his best recollection he received \$7,500 through fake telegraphic money orders on the Baltimore office, which he obtained by making out a money order payable to Warren Brewer, sending the telegraphic money order to Baltimore. I sent them to Baltimore of an evening, sending Mr. Brewer over there in the morning to collect the same, giving him a note of identification, by which he would have no trouble in getting the money. No money had been deposited with the witness here in Washington for those money

orders. The first one of these money orders was on the 28th of October and the amount \$2,500.

Q. Was any of the money you had on your person at the time of your arrest the proceeds of one of these money orders? A. Well the money that I took from the office, the comingled funds, the money of the money orders, was altogether, so I cannot say whether it was or not.

Witness stated that he had lost at the races some of the money he got on the last money order. The last money order he cashed was \$2,000. He had lost from fifteen to eighteen hundred dollars of that. The balance of the \$2,800 came from the co-mingled funds that I had on my person when I left the city.

Q. If you had no money on hand in the till, but you had checks on hand that had been received, checks similar to the ones sued upon in this case, where would you get the money with which to pay those money orders? A. The office of Crane, Parris & Co.

Q. How would you get it? A. By indorsing their checks.

My accounts were checked up by an Auditor of the Company during that period, either every four months or every three months.

They were checked up by a Mr. Meyers, and he was succeeded
27 by Mr. Hardy from the Philadelphia office.

Witness was shown a paper which he identified as a credit slip and testified that the check, for instance, September 11, 1914, Matsuo Itamy, \$786.03, would not appear on the cash book, but would appear on the credit slip.

Witness was handed the credit slips to see if he could find that item, and replied that he could not.

Witness testified that the figures indicated in the column of the credit slip under the word "Amount" show the amount of the bills paid by the various people during the day. The disbursements for each day would appear in the cash book. All receipts would appear on his credit slip--all bills paid by the customer. The amounts received in cash during the day in payment of bills would also be on the same statement.

If a man came in to send a telegraphic money order for \$500 and paid witness the money it would appear at no place except in the cash book.

My accounts were audited in September, 1914, by Mr. Hardy. He left September 29, 1914, and stated everything was O. K.

On cross-examination the witness testified: I told Mr. Foote, the manager, that I was short about \$18,000. I never kept an account of the actual shortage but that was my estimate of it. I signed over to him the \$2,800.

Witness had opened a bank account in Baltimore and deposited \$2,000, one or two days before, because he did not want to carry around the money on his person. On October 29 he had had one of these bogus money transfers for \$3,000. On October 30, he had had another one for \$2,000, and the bank account was opened on the last money order. The \$3,000 money order I brought back to Washington and used \$2,500 of that to cover the bogus money order I had sent on the 28th. There was, therefore, only \$500 of that money order left, and I then got the \$2,000 money order. On that day I collected and went to the races.

28 When asked if the first money order was not sent because he was out of money in the till, witness said No, it was because I saw how absolutely easy it was to get it; that if he had raised the bogus money order \$500 every day, it would have lasted for perhaps two or three weeks. He had to send from his office in Washington a draft to New York once every day to cover money orders transmitted by him to other points. It therefore gave him a 24-hour start. If his check failed to get over to New York to meet the money order, they would wire witness back, and if it would not come in a day or so they would wire again and then if it would not come in a day or two they would advise the manager. Witness had to send a check from Washington to New York drawn on his bank account in Washington, and that had to be signed by somebody besides himself. He sent a check in this case to cover the \$2,500, and made that good with the \$3,000 he got the next day. The last money order was not raised \$500 but was for only \$2,000, because that was all he needed. He could not pay \$3,000 out of the \$2,000, but he had some money in his pocket of the co-mingled funds that he could have used. He would not say he played the races in October daily, but he guessed he played them over half the time, and lost straight through—won perhaps once. We had quite a heavy money order business, I believe, in the month of October, or in some way the money came into the office. Witness was asked whether he was not cashing customers' checks pretty heavily in October, and said No, he did not say so. His attention was called to a two thousand dollar check and he said that was only done once. His attention was then called to the check of \$1,044.79 of October 5, making over three thousand dollars that he had cashed that month, and he admitted the evidence showed he had cashed those checks. He testified that he deposited the \$1,689.81 check of September 18, endorsed "Postal Telegraph-Cable Co., Henry Green, Cashier," and the bank handed him \$600 cash. He was shown the check of the Evening Star Newspaper Company, \$180.98, and his attention called to the fact that he had not signed his name on it, and he said that he rubber stamped it "Postal Telegraph-Cable Company" and then rubber stamped "Henry Green, Cashier," two stamps, and the bank turned over to him the \$180.98.

29 Witness was shown a check which had on it "Pay to the order of Crane, Parris & Company, Postal Telegraph Cable Co., Henry Green, Cashier", and he said that was the stamp he usually put on the checks when he deposited them. On the \$1,689.81 check of September 18, 1914, I got \$600 and deposited the balance. Witness was shown the check of October 19, 1914, for \$2,008.56, which was paid October 21, 1914, and asked if it appeared on the credit slips for October 19, 20, 21 and 22. He answered that it did not. The check of September 11, 1914, for \$786.03, paid September 15, 1914, witness stated appeared on the credit slip of October 19, 1914. Witness stated that perhaps this check was cashed on September 15, and to balance that up he entered it later. He did not enter it up on that day for the same reason that he did not enter up any of the others. He supposed that he used the money. Witness was reminded that a while ago he said that he entered on this slip all the funds that came into his hands as they came in, and he answered that, "If I had done that there

would have been no defalcation of any sort." Witness made enough false entries in his books to make them balance. Witness testified that if he had made an entry of the above check on his books and put the proceeds in the till, the books would have balanced, but if he left out the entry and took the money, it would not show anything about it. He said the money was co-mingled and he could not say which he took. He admitted there was this check of \$786 which he got that day, but did not get in, and did not think it probable that he got a money order that exactly balanced it; there may have been four or five. We handled quite a few in the course of a day's business. Witness was shown check of his own company for \$420 and said that Mr. Foote countersigned it, being a check absolutely in blank, in order to send his money orders away the next day, that he had taken in; that he could have filled that check in for any amount. It was agreed by counsel that all of the checks drawn on the account of plaintiff with defendants to meet pay-rolls were made payable to cash. The object in taking checks that came in from customers payable to the order of the Company and going to the bank and getting the cash on them was to get money that was needed in the course of the day's business. The checks could have been deposited and the money could have been drawn out just like money was drawn out for the pay roll but it had not been the habit or custom of the Company to do that. It had been the habit or custom of the Company, as far as I know, as far as I can remember, to have the customers' checks taken to the bank and have them cashed in that manner, in order to have the money to transact the day's business. The drafts I issued in payment of telegraphic money orders were drawn on my own Company and I was authorized to sign them. I could cash them by indorsing my own name on them because they were made out to other persons who had already indorsed them. There was an arrangement with Crane, Parris & Company by which these drafts would be cashed. There was an indorsement on the end of the drafts that they would be cashed by Crane, Parris & Company, and if we wanted to get the cash on these, I did not have to endorse the Company's name, but just endorsed my own name. It was the practice to cash the customers' checks just as these drafts were cashed.

On re-direct examination witness was shown the credit slip of October 6, 1914, and his attention called to an entry "Chinese Legation, \$1,044.79," and testified that it referred to Shah's check of October 5, 1914, for that amount. On re-cross examination witness testified that the check was entered on the day of its receipt and cashed the next day and he put the money into the cash drawer. Money was taken out of the drawer every day. I used any money I pleased, not these checks specially, any money that was handy in the cash drawer. I got the cash from this check in my hands and it was necessary to put it back in the cash drawer in order to transact the day's business. Some of those checks were cashed sometimes by two o'clock in the afternoon. I had on hand perhaps six or seven hundred dollars in fifty or a hundred dollar money orders which were to be paid unidentified that evening after banking hours. I had to have the money in the cash drawer in order to accommodate those customers. Asked if it would be possible

for him to tell even by the use of the books anything except that he was taking money out every day and putting money back in trying to keep his accounts balanced, the witness testified that the books would show that the company got credit for the \$1,044.79 check on the credit sheet, and also the \$789.56 check; and that the books would show that the money was used in the day's business. Asked if he did not falsify the books to keep them balanced, he answered "Naturally."

Thereupon NORMAN I. TAYLOR being called as a witness for the defendants, testified as follows:

I am in the electrical construction, lighting fixtures business for myself at 1325 I Street, this City. I was appointed cashier for the plaintiff company in February, 1911, I had been in the employ of the company prior to that time as messenger boy, operator, manager, clerk. I was cashier eighteen months. My duties were keeping the books of account with regard to the cash and making monthly reports to the home office of the Company. Had charge of the bank account with the defendants. The moneys that came into my hands as cashier were receipts for telegrams sent and received and paid in cash, moneys from customers, and moneys for the transmission of money orders. While cashier I very seldom found myself short of cash with which to transact the company's business. When I found myself short of cash, I would usually convert the money transfer into cash; those I had cashed during the day, which would be the cause of the shortage. I would get the money on these transfers by indorsing them myself and cashing them, either with Crane, Parris & Company, or in the neighborhood. I would indorse them under the name of the party to whom they were made payable, and who had indorsed it, "N. I. Taylor." I don't recall whether I endorsed them in the name of the company by me as cashier, but hardly think so. I just indorsed them in blank. I would get the cash on them at Crane, Parris & Company, usually, during banking
32 hours and on the rest of occasions, I think perhaps two or three times during the eighteen months there, at the Loughran Cigar Store, which was the nearest place. I don't recall ever having indorsed and cashed any checks that had been sent in by customers in payment of bills. I have not been able to recall it. I have been trying to recall it. I have not been able to. I don't think that I did."

On cross-examination witness testified:

"I would have \$200 cash on hand at the beginning of the day, as my transfer reserve. I kept this in hand all the time, separate from the cash drawer. It was never deposited in bank but was kept for emergency, to accommodate customers in cashing these money transfer slips, and would replace the money with the draft itself. I would send out every day money transfers to other cities, and would receive every day orders for money transfers to be issued here. This about offset itself. My recollection is that Washington paid out more than it received, but not a great deal more. I received other cash from branch offices and my cash coming in from branch offices, and the cash that I received on these transfer drafts ran the business comfortably. I would guard against having to get any more money than

I had from these sources. During banking hours if any extraordinary sized transfer would come there, I would take the man to the bank and get the cash there. That would eliminate it from my cash entirely. The thing works itself out without having to draw large sums of money, in the ordinary run. We had pay-days twice a month, which required around five or six thousand dollars. This money was obtained by a check on cash or pay-roll, drawn on our bank account and signed by myself and countersigned by the manager. Every check had to be signed and countersigned. That was my instruction. If our bank account in Washington happened to be low, the Manager would notify the Treasurer in New York, and the money would be forwarded direct from the Treasurer's office. These checks usually came payable to the manager, and I would deposit them to the account and draw the money in the regular way.

33 If I ran short of cash at any time in any day's business, I could get the money from the bank on a regular check. There was no occasion in my experience to indorse customers' checks made payable to the order of the Postal Telegraph-Cable Company. I never indorsed and got the cash on a check drawn by us payable to the order of the Postal Telegraph-Cable Company. There was no reason for that. That is, a check directed to the home office and goes to the Company and I would not cash one like that. When I had these money transfer drafts in my drawer and wanted to deposit them, I would stamp them with the usual deposit stamp. Plaintiff introduced in evidence one of these money transfer drafts showing how this witness indorsed them, which showed the indorsement "N. I. Taylor" immediately under the indorsement of the payee.

There was no trouble with respect to putting money or checks in the bank of the defendants. If I was absent from the office, a clerk could do it. There was only one rubber stamp provided for endorsing the checks, which was the stamp "Pay to Crane, Parris & Company or order. Postal Telegraph-Cable Company. N. I. Taylor, Cashier."

Thereupon SANFORD M. WARREN, being called as a witness, for the defendants testified as follows. I have lived in Washington about twenty-one years. I am twenty-five years old. I was first employed by the plaintiff as collector, working in the manager's office while I held that position. I was appointed cashier in August, 1912. As cashier my duties were to handle monthly reports of the local office, handle money transfer, keep the cash book, ledger and journal and had charge of the bank account. I handled all moneys that came into the office and all checks that were sent in in payment of bills due the Company. The bank account was kept with Crane, Parris & Co. The expenses of the office were paid by checks as a general rule and in a few instances possibly some small item may have been paid by cash.

While acting as cashier I sometimes found myself short of cash wherewith to transact the Company's business. In order to get cash I indorsed and cashed checks sent into the company by customers in payment of bills. To the best of my knowledge, it was done with the knowledge of Mr. Foote, the manager. I

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recall in this way having spoken to him about cashing such checks because when I took the position of cashier I had very little experience prior to that in bookkeeping and handling such affairs and I was given very able assistance by Mr. Foote in all matters of that kind and any kind. It was always taken to Mr. Foote before I took the authority to do anything of the kind. I remember the incident in that way; the actual wording of it I don't. The money that I obtained on checks cashed by me in this way I would use generally to pay money orders that had been telegraphed in from other stations.

When I received a check in payment of an account due the Company I would enter it on what is known as a credit slip "By check of Paul Jones or John Smith, or whoever it might be" &c. Later in the day if I found myself short of cash and needed cash to transact the business, I would cash a check of that sort and get the money on it. I have done that.

I would issue a draft on the Company in New York in payment of telegraphic money orders. If the money had been sent unidentified I would cash the draft for the payee. These drafts I would in turn cash in order to replenish my cash. I would get them cashed at the bank. While I was acting as cashier I do not remember that any one ever questioned my right to indorse and cash checks. At the end of the month I would furnish the home office with a trial balance and the balance shown on that statement had to agree with the balance in the Company's account with defendants.

There was nothing secret about my cashing checks, there was nothing unusual in it, only that it was not very often.

On cross-examination the witness testified as follows:

I was acting as cashier about six months. I had a fund of \$200 cash for money transfer reserve. In addition to that I received money every day in the course of business from the branch offices and for such telegrams as were sent from our office. I received all moneys that were turned in to be telegraphed to other cities. These amounts were ordinarily sufficient to meet all my requirements. It was unusual when they did not carry on the business of the Company. Money could have been drawn from the plaintiff's account with defendants by check signed by the cashier and countersigned by the manager. We would do that on pay-days. That was the proper way to do it for the pay roll. As a rule all accounts due the Company were paid by check; that was requested by the Company. Counsel for defendants admitted that the plaintiff's billhead contained the following: "Please pay by check to the order of the Postal Telegraph Cable Company. Amounts under one dollar may be remitted by postage stamps or currency." I know I presented the matter of cashing these checks to Mr. Foote, the manager. I have no distinct recollection of the day, the time or the check or the amount, the occasion, or any special instance. I can't remember a day three or four years ago. I was limited by the New York office to one thousand dollars a day in sending money transfers. I was asked to resign by the plaintiff company because I had taken the position on a trial for six months, with the understanding that if I made good, I would be given a raise in salary. At the end of the six months the Auditor decided that I was not big enough for the job, had not had enough bookkeeping experience. It was not on account

of any shortage. In making up our monthly reports to the home office, we were directly responsible for those reports coming out or agreeing as they should, and any shortage that had occurred during the month—as there always will be in handling money—possibly small amounts, a few cents or so, is supposed to be made up so that they balance. I did have to make up a few amounts on those reports. Also I was over the sum, but of course that did not do me any good—that was another question. I do not remember the amount I had to make up. My resignation was accepted as soon as I gave it.

On re-direct examination, witness testified: The things referred to in my testimony as shortages in my accounts were because my books would not balance. They may have been because of the failure to make an entry. The amounts I was over in my accounts the company kept and did not give me credit for; the amounts I was
33 short I had to make good. That in the six months he was cashier he would say that probably not over ten times did he cash customers' checks in order to get money to do business with. I would frequently cash the money transfer drafts.

On re-cross examination, witness stated there was no difference in his mind between cashing customers' checks and money order drafts. He considered he had a right to cash them.

Thereupon J. BLAKE GILPIN, being called as a witness for the defendants testified as follows: I have been associated with the defendants for the past fourteen years. During the past eight years I have acted both as receiving and paying teller in their bank. I know Messrs. Green, Warren and Taylor, former cashiers of the plaintiff, also knew Mr. Malloy, who was cashier, and a Mr. Sutherland who sometimes acted as cashier. During the time I have acted as teller in the defendants' bank, I have been in the habit of cashing for the several cashiers of the plaintiff on their respective indorsements checks which had been drawn by individuals on various banks payable to the plaintiff. During that time I never had any notice whatever that the cashiers of that Company had no authority to indorse such checks. When I cashed these checks I was told by the cashiers that they were short of funds in their office to run the office and they brought these checks up to us to cash. In good faith, knowing that the man who presented the checks was an official of the Washington branch of the plaintiff Company, we cashed them but we did not cash them to any one else except the people that we knew were connected with that office. Witness was shown the check dated September 18, 1914, for \$1,689.81 and the deposit slip and stated that the papers indicated that Green, the cashier, came to the bank with the check for \$1,689.81 and requested \$600 in cash. That witness gave him \$600 in cash, as marked on the deposit slip, and put the balance of the money to the credit of the plaintiff Company. This is not an unusual transaction in banking business and there was nothing unusual in this transaction.

On cross-examination, witness testified that defendants'
36½ bank was accustomed to do things of this kind and he understood that other banks are accustomed to do it. The plaintiff's pass book would show that it got credit for the \$1,089.81. Wit-

ness made the entry on the deposit slip \$600 cash. All that witness would have to show that Green got the \$600 in cash would be the notation on the deposit slip and his cash book and the fact that his cash balanced that night. When a man cashes a check with me I require him to put his name on the back either in writing or rubber stamp. I would want him to sign his name on there or a rubber stamp. I do that every day. A rubber stamp would be all right. Witness was shown check of Evening Star Newspaper Co. for \$180.98, indorsed by rubber stamp only, and which was shown by the testimony to have been cashed over his counter, and was asked what proof he would have that Green got the money if he should later come back and say he did not get it, and witness answered he would have to take the man's word that he paid the check; that witness paid it to him on the theory that if he did not get the money, somebody else would have to indorse the check besides Mr. Green. Witness thought he protected his bank by that kind of a stamp, because he paid it out personally himself. If he should die before the question arose he thought the records of the office would be sufficient protection.

37 "The defendant bank had letters of instruction from New York as to what officials of the plaintiff company could do in respect to drawing funds, a series of notices, stating who could sign and who could countersign checks. But the notices do not say who is to do the banking business with the bank. We have to infer that the man who is cashier is doing the banking business with the bank. The defendant bank had letters from the plaintiff limiting payment of Postal Telegraph money order drafts to one thousand dollars a day. If drafts in excess of that amount were to be cashed, special authority would be given by Western Union Telegraph. The following is one of those letters:

"Messrs. Crane, Parris & Co., Washington, D. C.

GENTLEMEN: Mr. S. F. Warren has been appointed cashier of this company at your city. He is hereby authorized to pay money transfers with drafts on this department in the sums not to exceed an aggregate amount of one thousand dollars on any one day. Should it be necessary for him to draw larger amounts, special authority will be given in each case by Western Union Telegraph."

All checks drawn on the account of the plaintiff company with the defendant bank were signed by the cashier and manager. The cashier deposited checks with the defendant bank. He had something to do with the bank every day. He would bring money orders for us to cash, intermingled with checks drawn to the order of the plaintiff company.

Q. Did you claim that you or your employers had any authority to cash checks endorsed by the cashier other than the authority borne of the knowledge that he was cashier and with Mr. Foote was authorized to sign checks drawn by the Postal Telegraph Cable Company on its account?

All I can say is what I said before; we had knowledge that Mr. Henry Green was cashier, and on that we cashed the checks, knowing that he was the duly authorized cashier of the company. I do not know anything else that I can say in that connection.

38 The foregoing, being in substance all the testimony offered in the case, the plaintiff moved the court to direct a verdict in its favor.

And thereupon the defendants, by their attorneys, moved the court to direct a verdict in their favor on the ground that the plaintiff had failed to make out a case and on the further ground that they could not recover under the money counts.

The court, having decided that it would grant the plaintiff's motion to direct a verdict in its favor, thereupon counsel for the defendants requested the court to grant the following instructions, and each of them:

1.

You are instructed upon the whole evidence to return a verdict for the defendants.

2.

You are instructed that it is not necessary for you to find from the evidence that Green as cashier of the Postal Telegraph-Cable Company had express authority to indorse and cash checks payable to the order of said Company and received by him as cashier but that such authority may be inferred from the nature of the position which he held, the character of the duties performed by him in such position, the apparent scope of his authority, the authority which it was necessary for him to possess in order to perform the duties devolving upon him as such cashier and all other facts and circumstances in evidence herein.

3.

39 If you find from the evidence that Henry Green was cashier of the Postal Telegraph-Cable Company in the city of Washington, and that it had been his usage and practice, while such cashier, and the usage and practice of other cashiers of said company in said city, while acting as such, to indorse and cash checks received by said cashiers made payable to the order of said Company, and that the indorsement of said checks by said cashiers was accepted as sufficient by the defendants, then you are instructed that your verdict must be for the defendants.

3 1/2.

If you find from the evidence that Henry Green was cashier of the Postal Telegraph-Cable Company in the City of Washington and that it had been his usage and practice, while such cashier, and the usage and practice of other cashiers of said Company in said city while acting as such, to indorse and cash checks received by said cashiers, made payable to the order of the said Company, and that the indorsement of said checks by said cashiers was accepted as sufficient by the drawers of said checks and by the banks upon which said checks were drawn, and by the banks by and through whom such checks were collected, then you are instructed that your verdict must be for the

defendants, if you further believe from the evidence that the said Company had knowledge of such usage and practice, or might have had such knowledge had it exercised proper and reasonable supervision and control of said cashier's action and conduct in carrying on its business in the city of Washington.

4.

You are instructed if you find from the evidence that the Postal Telegraph-Cable Company gave private instructions to Henry Green as its cashier in the city of Washington, limiting his authority to indorse checks made payable to the order of said Company and received by him as such cashier, such private instructions and limitation of authority are of no avail against the defendants in this case if you further find from the evidence that said Green as such cashier was authorized to indorse for any purpose checks made payable to the order of said Company and received by him as such
40 cashier, and your verdict must be for the defendants, unless you are satisfied by a preponderance of the evidence that the defendants had notice that Green's authority to indorse checks was limited and restricted to the purpose of depositing the said checks with said defendants to the credit of the Company's account.

4½.

You are instructed that the provisions of the by-laws of the Plaintiff Company, offered in evidence, are not binding upon the defendants unless you find from the evidence that the defendants had knowledge of such provisions.

5.

If you find from the evidence that Green as cashier of the Postal Telegraph-Cable Company without authority indorsed and cashed the checks mentioned and described in the declaration herein, or some of them, nevertheless your verdict must be for the defendants, unless you find from a preponderance of the evidence that the said company did not receive the proceeds of such checks; and the burden of proving that said Company did not receive such proceeds rests upon the Company.

6.

You are instructed that if you find from the evidence that Green, without authority, cashed the checks sued upon herein and received from the defendants the proceeds of said checks, your verdict must be for the defendants, if you further find from the evidence that Green placed the proceeds of said checks in the cash drawer of the cashier's office of the plaintiff company, even though you find that he thereafter embezzled the proceeds of said checks or some of them.

But the court refused to give said instructions, or any of them, and thereupon overruled the defendants' motion to direct a verdict in

41 their favor and granted the plaintiff's motion to direct a verdict in its favor. To the refusal of the court to grant the said instructions, and each of them, the defendants, by their counsel, then and there severally excepted, and to the refusal of the court to grant the defendants' motion for a directed verdict the defendants, by their counsel, then and there likewise excepted; and to the action of the court in granting the plaintiff's motion for a directed verdict the defendants then and there excepted and prayed the court to note said exceptions upon its minutes, which was accordingly done.

An- thereupon the jury was, by the court, directed to return a verdict for the plaintiff for the amount claimed in the declaration, less the amount of the check dated July 17, 1914, \$990.45, and less \$1,089.81 of the check dated September 18, 1914, for \$1,689.81.

Opinion of the Court in Directing Verdict for Plaintiff.

The Court (Mr. Justice Siddons): The questions that have been raised on motion by the defendants to direct a verdict in their favor, and a similar motion made on behalf of the plaintiff, have presented considerable difficulties to the Court's mind. Here we have two parties litigant. One or the other or both are victims of a dishonest and disloyal employee of one of them. It is somewhat like the case that is presented when there are two innocent persons, and under the law blame is to be placed somewhere, although they are innocent in a sense, one or the other, and generally the blame is placed upon the one who by some act, unintentionally committed, in good faith, made the loss possible.

In weighing the equities, the claims of these two innocent persons, in one sense the scale is made to balance against the one whose act made the loss possible. That is not perhaps a principle that is to determine the disposition of these motions, and yet back of all the argument, back of all the discussion, the legal principles that may be applicable, there is that situation.

Now, whose act made the loss that is complained of here possible, the plaintiff corporation or the defendant bankers? To determine that it seems to the Court that one has to look at the testimony
42 that has been offered here showing the relations of the plaintiff and the defendant, and how they stand. Looking at that evidence we find this case:

There is a foreign corporation engaged in business throughout the country, transacting its business through the medium of various local offices and local officials. The power to designate these local officials, with respect at least to the question of transacting the local banking business of the company, seems to have been left with the treasurer of the company. The power to designate or select local banks, in which the business of the company may be transacted in various parts of the country, if I remember the evidence, is determined either by action of the board of directors of the corporation, or by the treasurer—for the purpose of the statement it is not important which.

Whichever is the authority that designates the local bank, the

authority is exercised, and we have the case of the defendants here having been designated at least since 1908 when the plaintiff company was reorganized, as its banker in Washington. In so designating it, and contemporaneously with it, the authority to draw checks is conferred upon certain of these local officials, and information of that authority so conferred is communicated directly by the plaintiff company to the banker.

What was the object of all that? The company needed in Washington, as elsewhere, a bank in which from day to day its moneys received in the transaction of the business for which it was incorporated, might be deposited; and if I remember the testimony correctly, from time to time moneys so on deposit, less such as might be needed for current uses, was required to be transferred to the treasurer in New York.

It was then for the protection of plaintiff's moneys received in Washington, in one form or another, that the bank was selected and the authority of the local officials with the plaintiff company to draw checks under certain circumstances was so conferred.

43 It is said that the power to indorse checks drawn payable to the order of the plaintiff company remained with the treasurer alone. That contention if carried to its logical end would mean that in all parts of the country, in every local office of this plaintiff company wherever checks were received drawn payable to the company's order (and it is to be assumed they were received from day to day), the only way in which the company could realize upon these checks was that they must be bundled off to New York, there indorsed by the treasurer, and then to be returned through banks or otherwise, in order to be presented for payment by the banks on which they were drawn.

Can it be possible that that is what was meant by that resolution, or is it entirely the rational thing to say that the power to transfer ownership of the checks so drawn, for any other purpose than to clear them for the benefit of the plaintiff company, remained in the treasurer in New York, but that for the purpose of merely collecting the proceeds of such checks, the local officials receiving them in various parts of the country would have the right to make the appropriate indorsement in order to effect the collection through the selected local banks of the plaintiff company of the proceeds of the checks so drawn.

That is what seems to have been done here. Excepting the checks sued upon here, and probably some others (if we are to believe the testimony of one or the other of the witnesses for the defendant), all the checks were indorsed, "pay to the order of Crane, Parris & Company," the selected bankers of the plaintiff company here in Washington, and then deposited to be collected by them.

It was, as the Court thinks, justly claimed by counsel for the plaintiff that the whole object of all this was to set up a system designed for the protection mainly of the plaintiff company in the handling of its funds at the various local points throughout the country at which they operated, and to inform the selected banks or bankers of the extent of the power or authority of the local officials to handle the moneys, or evidences of money, belonging to the plaintiff company.

If the Court is right in all of that, what happened in the actual practice that prevailed here in the Washington office of the plaintiff company in its relations with the defendant company, to take it out of the rule prescribed by the plaintiff company in handling its funds and its checks.

It is said that there is testimony tending to show that not merely Green, the cashier, but some of his predecessors in the office of the local cashier, had in times past indorsed in blank the name of the plaintiff company and cashed the checks, as Green did; and that because, perhaps, of some entry in a book here the officers of the corporation at home were bound, by the means of knowledge that those entries are said to have presented to them, to have found out that a local cashier in Washington was, in defiance of all authority conferred upon him, assuming to indorse the name of the plaintiff company and collecting the money through the medium of such indorsement.

The Court thinks that the evidence relied upon for bringing home such notice to the company utterly fails to do that. If it does, what is there for the jury to pass upon? This is not an agreeable case to have to determine, in some of its aspects. Somebody has got to lose, unless Green can be made to respond, either the plaintiff company or the defendant banker. Both have been the victims of this man's practices.

It seems to the Court that in consideration of all the circumstances of the case the bankers were not warranted in giving any recognition at all to the endorsements made upon these checks of the company's name by the cashier Green. And as they collected the proceeds of those checks payable to the plaintiff company, its funds on the face of it, they had no reason to think that the funds were for any other purpose than to go into the coffers of the plaintiff company. The checks were made payable to it. They undertook to honor the indorsement of the plaintiff's name, made by this man, apparently in a few cases, so far as the evidence has gone.

One of Green's predecessors was unable to recall that he ever did anything of the kind. The other, whose testimony is more strongly relied on, says he did, but cannot give us any circumstances of the time, place, occasion or amount, or whose checks they were, but that he did it with the authority of Mr. Foote, and he says that because he was a young man, inexperienced when he went in to pursue the duties of cashier, Mr. Foote took an interest in him and explained everything to him; that he went to Mr. Foote with every disputed question, any question at all in the discharge of his duties; and because he said he did that he must have got authority from Mr. Foote to indorse the name of the company in blank on checks, on the few occasions on which he said he did so—but he can tell us nothing about it at all, as to the way he did it.

Supposing he did. Supposing that Mr. Foote knew; supposing Mr. Foote had expressly said to Mr. Green, "You are authorized to put the name of the plaintiff company, to indorse it in blank, on checks received here for its benefit—was Foote authorized to do that?"

The whole tendency of the evidence shows that Mr. Foote's authority with respect to the handling of the funds, the local manager's authority, was limited to the countersigning of checks.

The whole case, the whole practice,—except in these exceptional instances that are made the basis of this action (it is true one of the predecessors of Green said he cashed them)—shows that all understood that the requirement of the company was that none of this money received here, whether in the form of cash or checks in the first instance was to be disposed of in any other way than by its deposit in the designated bank, and that when there was need to draw upon that account there was a method prescribed for doing it, which was prescribed by the corporation itself through its treasurer.

It seems to the Court, who has anxiously reviewed the contentions here, that the result must be that the motion of the defendant for a directed verdict must be overruled, and that the motion of the plaintiff for a directed verdict in its favor must prevail, and that direction will be given.

The verdict to be returned however, will be in the amount claimed less the check for \$990 which was withdrawn, and the portion of the check, one thousand and some dollars—you can figure out the difference.

A directed verdict in favor of the plaintiff will be entered.

46 And thereupon, after the foregoing proceedings, which are hereby made a part hereof, the defendants, by their counsel, tendered their bill of exceptions and prayed the court to sign, seal and make the same a part of the record, and to have the same force and effect as to each and every of the exceptions taken by the defendants and noted by the court as aforesaid, as if the same had been set forth in a separate bill of exceptions, signed and sealed by the justice presiding at the trial, which is accordingly done this 23d day of October, 1917.

F. L. SIDDON, [SEAL.]
Justice.

O. K.
B. E. HINTON,
Att'y for Appellee.

47 [Endorsed:] At Law. No. 57604. Postal Telegraph-Cable Co., Plaintiff, v. Augustus Crane et al., Defendants. Bill of Exceptions.

Endorsed on cover: District of Columbia Supreme Court. No. 3137. Augustus Crane et al., &c., appellants, vs. Postal Telegraph Cable Company, &c. Court of Appeals, District of Columbia. Filed Nov. 26, 1917. Henry W. Hodges, clerk.

